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IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF TEXAS

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DALLAS DIVISION

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UNITED STATES OF AMERICA (NUMBER 3: 04-240-G

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VERSUS

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HOLY LAND FOUNDATION, ET AL. (July 20, 2007

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18:00

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VOLUME 5

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VOIR DIRE EXAMINATION
BEFORE THE HONORABLE A. JOE FISH

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A P P E A R A N C E S:

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For the Government:

15

MR. JIM JACKS

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MR. BARRY JONAS

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MS. ELIZABETH SHAPIRO

18

MR. NATHAN GARRETT

19

Assistant United States Attorney

UNITED STATES DEPARTMENT OF JUSTICE

NORTHERN DISTRICT OF TEXAS

U.S. Courthouse

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Dallas, Texas 75242

214/659-8600

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18:00 1 P R O C E E D I N G S:

2 THE COURT: Good morning, Ladies and Gentlemen.
3 I asked you to come this morning before ten o'clock
4 because Ms. Hudson told me earlier this morning that she
5 had received a phone call from Ms. Hollander to the effect
6 that Ms. Hollander thought we needed to resolve the
7 question of attorney representation for some of the
8 defendants and their counsel before counsel were
9 introduced to the jury panel, and I agree with that. I
10 didn't want to keep the jury panel waiting to start this
11 at ten o'clock, and that's why I asked you to be here at
12 an earlier time.

13 Ms. Hollander, do you have anything to say about
14 that issue?

18:00 15 MS. HOLLANDER: Your Honor, all I can say is
16 that if there is no one here to represent Holy Land since
17 we don't know exactly what its status is we can't
18 represent Holy Land.

19 THE COURT: We being you and who else?

20 MS. HOLLANDER: We being my law firm, myself and
21 Teresa Duncan and John Boyd, who's not in the courtroom --
22 the lawyers in my office. Since the government has raised
23 this and is concerned that we need waivers on the record
24 by your Honor asking questions, and there is no one to
25 answer those questions on behalf of Holy Land. Since the

18:00 1 government is concerned about it we're concerned about it.
2 So we can't represent Holy Land under those circumstances.

3 THE COURT: Mr. Jonas.

4 MS. SHAPIRO: Honestly, I'm not sure how we
5 proceed when it comes to Holy Land, but I think we would
6 like to see because there was a joint representation up to
7 this point with the defendant Shukri Abu Baker that at
8 least he be questioned by the Court so that there is no
9 issue with regard to his counsel. With regard to Holy
10 Land Foundation, I don't know what we do. Maybe remain
11 unrepresented for the trial.

12 MS. HOLLANDER: Your Honor, I think in light of
13 what the government has said, and we have no problem with
14 your Honor questioning Mr. Baker although we do believe
18:00 15 that should be ex parte in chambers if your Honor
16 questions him, but based on what the government has said,
17 we will simply withdraw from representing Holy Land and
18 represent Mr. Baker, and your Honor can question him if
19 you wish. I remind the Court he did sign a waiver.

20 THE COURT: A waiver of what?

21 MS. HOLLANDER: Of conflict.

22 THE COURT: Well, if you propose to withdraw
23 from representing the Holy Land Foundation at this point,
24 I don't know that I really need to question him. The only
25 questioning that I felt was necessary was that which I

18:00 1 typically do as required by Rule 44 when there is joint
2 representation to be sure that each of the defendants
3 who's jointly represented understands the hazards of that
4 representation. But if there is to be no joint
5 representation at trial, I'm not sure that I see the
6 necessity for that, and if I do engage in such
7 questioning, I don't see the necessity to do it ex parte.
8 I typically do it in the courtroom during arraignment when
9 it is necessary.

10 MS. HOLLANDER: That's fine with us, if you
11 don't want to question him, your Honor, but we will
12 withdraw from representing Holy Land at this time. Ms.
13 Duncan and I will continue to represent Mr. Baker.

14 THE COURT: Let me while we're on that subject
18:00 15 be sure that I am correct later this morning in who I
16 introduce as representing what defendants. Because as I
17 said at an earlier conference, I'm not sure our docket
18 sheet is completely up to date. In fact, I checked it
19 again this morning, and that may be the clerk's office's
20 fault. I'm not saying that counsel bear any
21 responsibility for that. But the docket sheet I think as
22 of this morning reflected that Holy Land was represented
23 by John Boyd, Nancy Hollander and Josh Dratel and Mr.
24 Baker was represented by Nancy Hollander and John Boyd.
25 So I guess on Holy Land, I can simply say that it is

18:00 1 unrepresented.

2 MS. HOLLANDER: Your Honor, I believe that's an
3 error. I don't know where the error originated. But the
4 lawyers who represent Holy Land are the same lawyers who
5 represent Shukri Abu Baker, and it's my law firm. So it's
6 myself, Teresa Duncan and John Boyd. I'm not sure how
7 Joshua Dratel's name got in there.

8 THE COURT: I don't know either.

9 MS. HOLLANDER: So as it would stand now, my law
10 firm -- John Boyd who's not going to be in court or at
11 counsel table. But John Boyd, Teresa Duncan and I
12 represent Shukri Abu Baker, and in terms of introductions
13 to the jury it will simply be Teresa Duncan and Nancy
14 Hollander.

18:00 15 THE COURT: So Mr. Boyd will not be
16 participating?

17 MS. HOLLANDER: At counsel table, that's
18 correct.

19 THE COURT: I guess I need not include his name.
20 And then Mr. El Mezain, I have Joshua Dratel and Mr.
21 Mysliwiec. Then I have Mr. Odeh represented by Mr.
22 Westfall and Mr. Abdulqader represented by Ms. Cadeddu.
23 And Ms. Moreno and Mr. Cline representing Mr. Elashi.

24 MR. JACKS: Your Honor, I am going to want to
25 address some of the issues with regard to the

18:00 1 representation issue. I can wait.

2 THE COURT: I think I am finished. I was told
3 you had other issues, but I wasn't told what they were.

4 MR. JACKS: Yes, your Honor. The reason it is
5 being brought up now is simply that it is something that
6 has only recently I guess -- the extent of this practice
7 or whatever has come to light. I believe it was earlier
8 this week that Ms. Duncan filed an entry of appearance in
9 which she filed two forms, one indicating that she was
10 appearing as a retained attorney for the Holy Land
11 Foundation, and the second page of that indicated she was
12 appearing as appointed attorney for Shukri Abu Baker. The
13 government has never been served or seen any notice or
14 paperwork from the Court showing that Ms. Duncan has been
18:00 15 appointed by the Court to represent Shukri Abu Baker. Ms.
16 Hollander has at various times claimed that her firm was
17 appointed, and I don't believe that is the accurate
18 statement. A law firm cannot be appointed. Only an
19 attorney can be appointed. In addition, with regard to
20 Mr. Mysliwec -- I apologize for mispronouncing his name
21 as well. Mr. Dratel's associate, Mr. Mysliwec. He also
22 entered last Thursday, and the Court raised the question
23 of how many attorneys is an indigent entitled to, and it's
24 the government's understanding only in a capital case is a
25 defendant entitled to more than one attorney. The Court

18:00 1 asked Mr. Dratel about that, and he really didn't respond.

2 THE COURT: Well, I have done some more research
3 on that, and so I can bring you up to date on what I know
4 about that. After I had that colloquy with counsel in the
5 courtroom, I talked with Magistrate Judge Stickney, who as
6 you know has had a large role in handling the pretrial
7 part of this case, and Judge Stickney told me that in
8 certain circumstances a second counsel can be appointed in
9 a noncapital case, and in fact, I had signed an order
10 approving the appointment of Mr. Mysliwiec in this case
11 and that he was supposed to be -- as I understood Judge
12 Stickney's phrase, that he was supposed to be sort of a
13 swing attorney. There was so much work that maybe he was
14 going to be assisting more than just Mr. Dratel in the
18:00 15 case. I was afraid I had exceeded my authority or the
16 Court had in appointing more than one attorney to
17 represent Mr. El Mezain, but according to Judge Stickney,
18 that's not true.

19 MR. JACKS: That was my impression, that a lot
20 of this was not something necessarily that your Honor had
21 been involved with which leads me to my second point.
22 Again, the government has received no indication, no
23 pleadings from the clerk's office or the magistrate's
24 office indicating that Mr. Mysliwiec had been appointed,
25 and even if it was entirely proper and within the Court's

18:00 1 rules, it's difficult to see why that type of a pleading
2 would have to be kept from the government and done through
3 an ex parte procedure, and I don't know if the Court takes
4 a step back and looks at the record -- and the government
5 has made this point for quite some time in this case --
6 you have attorneys who have entered this case as retained
7 attorneys from out of district and suddenly or quickly
8 become appointed attorneys again without any participation
9 or knowledge or notice to the government. And I think
10 even Mr. Westfall entered the case as a retained attorney
11 and was eventually appointed, and it could certainly lead
12 one to the belief that the defendants or defense counsel
13 is choosing counsel to represent certain defendants, and I
14 don't believe other indigent defendants are afforded that
18:00 15 opportunity. But be that as it may, I looked at the
16 docket sheet, and the docket entries are in the low seven
17 hundreds now, and probably a full one third of those
18 entries are ex parte sealed matters that have not been
19 disclosed to the government. The government raised that
20 point more than once with the Court, and on in the case
21 the government was advised that the CJA entries were
22 merely bills that were being submitted for payment under
23 the CJA act.

24 THE COURT: I still believe that to be the case.
25 I have not gone back and looked at those entries.

18:00 1 Everything you say is consistent with my knowledge of the
2 case, but there have been a lot of bills, I can tell you,
3 because I have to personally review them and sign off on
4 them.

5 MR. JACKS: I understand. Your Honor, there has
6 been other ex parte pleadings filed by the defendant, and
7 there has been some filed by the government. The only
8 motion filed by the defense requesting permission to file
9 an ex parte motion was one filed early on in 2004. It
10 does not show that it was served on the government. It
11 does not show that there was a certificate of conference.
12 It does not state what the purpose of the motion is or
13 even the subject matter of the motion. The government has
14 made at least three ex parte motions with the Court. All
18:00 15 of them have been pursuant to the CIPA statute which it
16 was required to do. The motions were served upon the
17 defendant. They knew the nature of what the government
18 was asking to do, and they had an opportunity and in fact
19 did file a responsive pleading. None of that has happened
20 with regard to the ex parte material and contacts that the
21 defense may have had with this Court or with the
22 magistrate judge.

23 About a week and a half ago, we were informed
24 that Mr. Cline was going to be entering the case and that
25 Mr. Cline had, in fact, signed a memorandum of

18:00 1 understanding some months ago, years ago in this case.
2 That memorandum of understanding was nowhere to be found
3 among the pleadings in this Court. The government
4 obtained a copy of that memorandum of understanding
5 showing that it was filed on August 30th of 2006. When
6 you go back and look at the docket, the only thing filed
7 on that date was something ex parte sealed, and it was
8 referred to as a CJA filing. Well, a memorandum of
9 understanding saying you have read the protective order
10 and intend to abide by it is not a sealed filing. The
11 government requires notification before anybody is given
12 access to classified material. Clearly, that was not done
13 in this case, and Mr. Cline's previous involvement in this
14 case was totally unknown to the government, and we believe
18:00 15 that's a violation of the protective order.

16 Again, the government raised the issue with the
17 Court last week in the course of the hearings. I believe
18 it was in regard to the Kastigar or attorney-client
19 situation. According to the record now, the Holy Land
20 Foundation up until today had a retained attorney. Mr.
21 Elashi had a retained attorney. First Mr. Evans and then
22 Ms. Moreno, and then as recently as ten days or two weeks
23 ago, Mr. Cline enters as an additional retained attorney
24 for Mr. Elashi. And the government has reason to believe,
25 as we stated, that Ms. Moreno and Mr. Cline are being paid

18:00 1 by this Muslim Legal Fund of America. Even if a person --
2 Even if the money to pay a retained lawyer comes from
3 donors or friends, at some point in time the defendant
4 would have to agree to accept that money, and it becomes
5 discretionary with him. So I don't believe that a legal
6 defense fund can determine who an attorney is going to
7 represent. At some point in time the defendant would have
8 to agree, and essentially that money would have to have
9 been expended on behalf of the defendant.

10 It appears, your Honor, that there has been a
11 manipulation at least of the CJA system. If this legal
12 defense fund wants to pay for a lawyer to represent some
13 of these parties but not cut into the taxpayers paying for
14 part of the attorneys, it seems like they have done a good
18:00 15 job of that in the sense that they have -- rather than
16 having Mr. Cline represent one of the appointed indigent
17 defendants, he simply comes on as an additional lawyer for
18 a client who already has a retained attorney. There is
19 nothing the government can do about that, but I think
20 that's something the Court clearly has the authority to
21 look into and make inquiry about the circumstances
22 surrounding whether or not there was manipulations of
23 lawyers and manipulations where lawyers come into the case
24 saying we have been retained and then automatically say a
25 few weeks later, oh, my client is indigent now, will you

18:00 1 appoint me. I simply bring up all of these because I
2 think when you step back and look at the totality of the
3 circumstances, quite frankly, your Honor, the government
4 is very concerned about the degree of ex parte filings,
5 the fact that none of these filings have been pursuant to
6 a motion. I understand that the local rules allow a court
7 to seal anything that the parties request and show good
8 cause for. It may require a motion or simply saying can
9 this be filed under sealed. Sealing is one thing. Doing
10 it in an ex parte fashion is an entirely different thing.
11 I can imagine if the shoe was on the other foot and the
12 government was having constant ex parte contact with
13 either the magistrate court or this Court, the reaction of
14 the defendants and rightfully so. The courts have said
18:00 15 that ex parte contact with the Court should be something
16 that is extremely rare, and I don't think you can say that
17 in this case. I have come across an article that Mr.
18 Dratel wrote for the New York Law School Review 2003/2004,
19 entitled "Turning the Tables: Using the Government's
20 Secrecy and Security Arsenal for the Benefit of the Client
21 in Terrorism Prosecutions," and he talks about using this
22 ex parte contact with the Court as a strategic device.
23 Even to the point that if you can get the court to appoint
24 an expert, it's unlikely the court is going to exclude
25 that expert if the Court has already paid for that expert.

18:00 1 So it appears this is not some impromptu strategic
2 procedure. It's been planned. The government has been
3 raising this question throughout this litigation. We have
4 made the point over and over that the defendants have
5 never filed a motion even giving the government notice
6 that we're going to have an ex parte contact with the
7 Court, we just want to let you know about it and this is
8 the subject matter. So the government is completely in
9 the dark regarding how many ex parte pleadings there has
10 been with the Court or magistrate court or what the
11 subject matter has been, whether or not the government had
12 anything to add or contribute, and as I said, your Honor,
13 I guess one of the things that really tipped the scale in
14 this regard is finding out that Mr. Cline, even though he
18:00 15 was not an attorney of record in this case was somehow --
16 he somehow signed a memorandum of understanding to view
17 the classified material totally unknown to the government.
18 Clearly, I would submit in violation of the protective
19 order which says that anybody that is going to have access
20 to that material the government has to be notified if they
21 have to sign a memorandum of understanding.

22 In terms of -- What does the government want the
23 Court to do about it? Well, I don't know what you can do
24 about it at this point in time. I simply want the Court
25 to be made aware of it, and as far as a remedy, we would

18:00 1 ask the defense be required to file a motion specifying
2 each and every ex parte contact with the Court, each ex
3 parte submission, the grounds for that submission so that
4 at least at this phase the government can be aware of the
5 degree of ex parte contact between defense counsel and the
6 Court. And we don't know if we have an objection or not.
7 But you know, you can't even respond to that if you don't
8 know what the contact was.

9 THE COURT: Mr. Jacks, it's about four minutes
10 to ten. I don't want to be late in starting this general
11 voir dire session. I don't think this is something I need
12 to resolve before the jury comes up. I don't want to cut
13 you off. If you have more to say, I'll hear it at a later
14 time.

18:00 15 MR. JACKS: The last thing I have to say would
16 be to -- There was a Supreme Court case that addressed
17 this topic, and essentially the Supreme Court said the
18 adversary process is not a poker game and not something
19 where one side can hide their cards and hold back their
20 strategy until they get to see what the other side is
21 going to do, that there is a right on both sides for a
22 free flow of discovery and exchange, and we believe that
23 simply has not taken place in this case. That's all I
24 have, your Honor.

25 THE COURT: Mr. Jacks, I have had a lot more

18:00 1 exposure to the Criminal Justice Act in this case than any
2 other case assigned to me. Judge Stickney has had a very
3 active role in managing this case for me, including for
4 the most part the CJA matters. So if you want to pursue
5 some relief on this, I am going to refer you to Judge
6 Stickney because he really is more knowledgeable about
7 this than I. And as you know, he was defense counsel
8 before he came on the Bench. So I think he's more
9 familiar with the CJA than I am. We can do that by having
10 Ms. Casey preparing a transcript of your remarks, and I
11 can refer it to him in a formal way or you can go over and
12 tell him what you have told me, and I'm sure he would
13 listen to you. I don't know in what respect he is aware
14 of it. Certainly more than I because he sees the CJA's in
18:00 15 the first instance. Like you, I was unaware that Mr.
16 Cline had signed this memorandum of understanding a year
17 ago, and I don't know anything about that. So if you
18 think there is a violation of the protective order and you
19 want to pursue that, I would refer that to Judge Stickney
20 in the first instance for his recommendation to me.

21 MR. JACKS: Yes, your Honor.

22 THE COURT: Ladies and Gentlemen, let's take a
23 brief recess while the jury panel is brought to the
24 courtroom and then we will commence general voir dire.

25 (Recess)

18:00 1 THE COURT: Good morning, Ladies and Gentlemen.
2 We have already talked to all of you individually, but as
3 a group you are now the panel from which the jury in this
4 case will be selected. So let me first formally welcome
5 you to the United States District Court for the Northern
6 District of Texas, Dallas Division. I don't think we took
7 the time to do that when you were up here and we talked to
8 you individually.

9 As you heard, my name is Joe Fish, and I will be
10 presiding over the trial, and in just a moment I will
11 introduce to you the other people who will be
12 participating in the trial so that I can ask you whether
13 you are acquainted with any of us.

14 Let me first outline what I hope to accomplish
18:00 15 this morning. Now that you are all here as a group, I
16 have some additional questions to ask you, and once I have
17 asked all of my questions and you have responded to those
18 questions where you have an answer, we will take a recess
19 and the parties and counsel and I will go through the
20 process of actually selecting the jury. So before you
21 leave the courthouse today, you will know whether you are
22 going to be on the jury that will hear this case or not.
23 I hope to complete these proceedings by approximately the
24 noon hour or shortly after noon so that everybody can have
25 lunch at near your normal lunch hour. So please bear with

18:00 1 me if sometimes the proceedings seem to go slowly this
2 morning.

3 The concept of our jury system is that you as
4 members of the community come into court when you are
5 summoned to do so, and if you are selected as a juror, you
6 will become a judge of the facts. That is to the extent
7 that the parties to this dispute are in disagreement about
8 what happened, it will be your responsibility as jurors to
9 determine the facts from the evidence which is presented
10 here in court.

11 By contrast, I will be the judge of the law and
12 will decide disputed questions of law, including what
13 evidence is available for the jury's consideration. So
14 that will be the division of responsibility that you and I
18:00 15 will have during this trial. You will be the judges of
16 the facts, and I will be the judge of the law. Because in
17 a very real sense you will be judges in this case, I have
18 some additional questions to ask you to determine whether
19 this is a suitable case for you to sit in. We know, of
20 course, from the previous questioning that we have done
21 and from the questionnaires that you have filled out that
22 you are qualified to sit as jurors in this court
23 generally. But there might be something about your
24 background or experience or your knowledge of one of the
25 parties or one of the attorneys or one of the witnesses

18:00 1 that might disqualify you from serving in this particular
2 case. So please listen closely to my questions, and if
3 you have an answer to my question, indicate by raising
4 your hand, and then when you are recognized, please stand
5 and give us your name and then your answer as completely
6 but concisely as possible. As you previously remember or
7 remember from the previous visit to the courtroom where
8 you were questioned individually, the acoustics in this
9 room are not the best. So please speak out so that
10 everyone involved in the trial can hear your answer.

11 As I said, I want to introduce the various
12 people participating in the trial so that I can ask
13 whether you are acquainted with us. You met some of the
14 them earlier in the individual questioning but not all of
18:00 15 them. So I want to be sure that we cover all of that. In
16 addition to myself, I have some other members of the
17 Court's staff to introduce to you. Mr. Kiblinger is our
18 court security officer who opened court a moment ago. Mr.
19 Kiblinger will serve as the baliff of this jury once it is
20 selected. The lady with the red hair seated immediately
21 in front of me is Ms. Cass Casey. She's the court
22 reporter and takes down what everyone says, and that
23 becomes the official record of our proceedings.

24 To her left, is Ms. Susan Hudson, who's our
25 court coordinator and a deputy clerk of this Court. The

18:00 1 Court's administrative assistant just came in the door
2 behind me and to my right. She is Ms. Eleanore Piwoni.
3 She will probably not be in the courtroom throughout the
4 trial but in and out on occasion. So I wanted you to know
5 who she is.

6 Over here, I have more members of the Court's
7 staff. The gentlemen next to the Bench is Mr. Ben
8 Stewart. Next to him is Mr. Kyle Miller. And then Mr.
9 Dennis Lester, who's a law student from Loyola in New
10 Orleans who's with us for a few weeks this summer as an
11 intern. I believe that completes the introduction of the
12 Court and its staff. Let me pause to ask if there is
13 anyone on the panel who knows me or any other member of
14 the Court's staff just introduced.

18:00 15 Ladies and Gentlemen, as you heard earlier, this
16 is a criminal case, and I will have more to say about that
17 later. But one significant fact about a criminal case is
18 that it is brought in the name of the United States of
19 America as the prosecuting authority, and the United
20 States is represented by several lawyers, some of whom are
21 with the Office of the United States Attorney for the
22 Northern District of Texas, specifically Mr. Jim Jacks.
23 Mr. Jacks, would you stand and I am going to ask you to
24 introduce to the Ladies and Gentlemen of the panel your
25 cocounsel and where they are from.

18:00 1 MR. JACKS: Good morning again, Ladies and
2 Gentlemen. As I told you before, my name is Jim Jacks.
3 I'm an Assistant United States Attorney here in Dallas for
4 the Northern District of Texas. To my left is Elizabeth
5 Shapiro. Ms. Shapiro is an attorney from the Department
6 of Justice, and she's also a special assistant to the
7 United States Attorney. To my right is Nathan Garrett.
8 Mr. Garrett is also an assistant United States Attorney.
9 And to my far right is Mr. Barry Jonas. Mr. Jonas is also
10 an attorney -- a trial attorney from the Department of
11 Justice in Washington and a Special Assistant U.S.
12 Attorney.

13 THE COURT: Thank you, Mr. Jacks and Ladies and
14 Gentlemen. Is there any member of the panel who knows Mr.
18:00 15 Jacks, Ms. Shapiro, Mr. Garrett or Mr. Jonas? Is there
16 any member of the panel who has ever had any dealings with
17 the Department of Justice or the United States Attorney's
18 office for the Northern District of Texas, if those
19 dealings did not involve these particular lawyers? Yes,
20 sir.

21 VENIRE PERSON: Steven Saucier. We had a girl
22 that worked for our firm. I work for an environmental
23 consulting firm. She went on to get her law degree and
24 worked for the Department of Justice. So I was
25 interviewed by them for her. I don't know if that counts.

18:00 1 But she's in Washington.

2 THE COURT: Do you know the name of the lady you
3 are referring to?

4 VENIRE PERSON: Elizabeth Sanders.

5 THE COURT: How long ago was this?

6 VENIRE PERSON: About eight years ago.

7 THE COURT: And do you think Ms. Sanders's
8 connection with the Department of Justice would have any
9 influence on you if you were selected to serve as a member
10 of this jury?

11 VENIRE PERSON: No. I just wanted to be
12 forthright.

13 THE COURT: Well, you did the right thing in
14 bringing it to our attention. Thank you, sir.

18:00 15 Anyone else?

16 Now, let me turn to the other side of the case.
17 I think, as you heard in the individual questioning, there
18 are several defendants named in this case in addition to a
19 corporate entity. The corporate entity is named the Holy
20 Land Foundation for Relief and Development. However, that
21 entity is unrepresented at this trial. And I don't think
22 during the individual questioning you were introduced to
23 all of the individual defendants. I'm just going to go in
24 the order in which these names are mentioned in the
25 indictment. The indictment is the document which is filed

18:00 1 with the court to commence a case like this. It is only a
2 written accusation, nothing more, and I will have more to
3 say about that later as well. But the first individual
4 defendant named in the indictment is a man by the name of
5 Shukri Abu Baker, and he is represented by Ms. Nancy
6 Hollander and Ms. Teresa Duncan.

7 Ms. Hollander, I'll ask you to introduce your
8 client to the Ladies and Gentlemen of the panel, and also
9 if you have anyone assisting you in the trial, introduce
10 that person or those persons as well.

11 MS. HOLLANDER: Thank you, your Honor. Good
12 morning, Ladies and Gentlemen. I'm Nancy Hollander, and
13 my cocounsel is Teresa Duncan. Our client is Mr. Shukri
14 Abu Baker.

18:00 15 THE COURT: Thank you, Ladies and Gentlemen.
16 You may be seated. Is there any member of the panel who
17 knows Ms. Hollander, Ms. Duncan or Mr. Baker?

18 The second individual.

19 MS. HOLLANDER: Excuse me. Should I introduce
20 my paralegal.

21 THE COURT: Yes, ma'am, if that person is here.

22 MS. HOLLANDER: I'm sorry. I didn't see her in
23 the back. Martha Hardiman is a paralegal who will be
24 assisting us.

25 THE COURT: Thank you. Anyone who knows Ms.

18:00 1 Hardiman?

2 That reminds me. I have failed to make one
3 other introduction from the Court's staff. He's not here
4 today, but there is a man named Andrew Newman who will
5 become a law clerk in this court in approximately mid to
6 late August, and it's anticipated this trial will still be
7 going at that point. His name is Andrew Newman, and he
8 has just graduated from the University of Texas Law
9 School, and I think he's currently studying for the bar
10 exam. Is there anyone who knows Mr. Newman?

11 Now let me go back to the defendants who are
12 named in the indictment. The second individual defendant
13 named in the indictment is Mohamed El Mezain, and he is
14 represented by Mr. Joshua Dratel and Mr. Mysliwiec. Let
18:00 15 me ask you to introduce your client as well as anyone
16 assisting you during the trial.

17 MR. DRATEL: My client is Mohamed El Mezain, and
18 I'm Josh Dratel, and this is my associate Mr. Mysliwiec.

19 THE COURT: Anyone recognize Mr. Dratel, Mr.
20 Mysliwiec or Mr. El Mezain?

21 I forgot to do this with Ms. Hollander so I need
22 to back up. Mr. Dratel, are you with a law firm so that I
23 can inquire if anyone has had any dealings with your law
24 firm?

25 MR. DRATEL: Yes, Joshua Dratel Law Offices.

18:00 1 THE COURT: Anyone who has ever dealt with the
2 law firm of Joshua Dratel?

3 Ms. Hollander.

4 MS. HOLLANDER: My law firm is Freedman, Boyd,
5 Daniels, Hollander.

6 THE COURT: That's a long list of names. Anyone
7 on the panel who has ever had any dealings with that law
8 firm?

9 The next defendant named in the defendant is
10 named Ghassan Elashi, and Mr. Elashi is represented by Ms.
11 Linda Moreno and Mr. John Cline.

12 Ms. Moreno, let me ask you to introduce to the
13 Ladies and Gentlemen of the panel your client as well as
14 anyone assisting you during the trial.

18:00 15 MS. MORENO: Thank you. Good morning, Ladies
16 and Gentlemen. My name is Linda Moreno. I represent Mr.
17 Ghassan Elashi. Cocounsel is Mr. John Cline. My law firm
18 is the Law Services of Linda Moreno, and Mr. Cline is with
19 Jones Day.

20 THE COURT: Thank you. Any members of the panel
21 know Ms. Moreno, Mr. Cline, Mr. Elashi? Yes, sir, second
22 row.

23 VENIRE PERSON: Freeman Robinson. I don't know
24 either lawyer, but I have done some work for Jones Day
25 before with my firm.

18:00 1 THE COURT: Refresh my memory, if you will, what
2 kind of work you have done for that law firm.

3 VENIRE PERSON: I work for a graphic media firm,
4 and I think we have done some stuff for a client of Jones
5 Day.

6 THE COURT: Jones Day has several offices in
7 several cities. Has your firm did work for the Jones Day
8 firm here?

9 VENIRE PERSON: Yes.

10 THE COURT: I think Mr. Cline is probably from a
11 different office of Jones day. So as far as you know you
12 haven't had any contact with him?

13 VENIRE PERSON: No, sir, I haven't.

14 THE COURT: Given the fact that Mr. Cline is
18:00 15 involved in the case and with the firm of Jones Day, if
16 you are selected to serve as a judge of the facts in this
17 case, would you be inclined for or against Mr. Cline and
18 his client by virtue of your having done work for that law
19 firm?

20 VENIRE PERSON: No, sir.

21 THE COURT: Going down the indictment further.
22 Ms. Cadeddu, let me ask you to introduce your client as
23 well as anyone assisting you during the trial.

24 MS. CADEDDU: My name is Marlo Cadeddu, and I'm
25 with the Law Office of Marlo Cadeddu, and I represent Mr.

18:00 1 Mufid Abdulqader.

2 THE COURT: Anyone who recognizes either of
3 these people?

4 VENIRE PERSON: My name is Baccus. My wife
5 worked with one of the defendants in their home. It's
6 called International Child Intervention. She went out to
7 their house and worked with their son for a two or three
8 day period, and there is things that she has told me that
9 could definitely sway my judgment.

10 THE COURT: Thank you, Mr. Baccus. I did
11 receive information from the jury administrator about
12 that, although not in as much detail as you have given us.
13 I have related that information to counsel and the parties
14 when I received it. I think we have determined that the
18:00 15 defendant involved in the case -- that your wife visited
16 with Mr. Elashi who was introduced not this last defendant
17 but the one before that. And I appreciate your bringing
18 that to our attention.

19 The next defendant is Mr. Abdulrahmin Odeh.

20 MR. WESTFALL: Thank you. Ladies and Gentlemen,
21 I'm Greg Westfall. My law firm is Westfall, Platt, Cutrer
22 and Foster. This is Mr. Foster who assists me.

23 THE COURT: Thank you, gentlemen. Anyone who
24 knows Mr. Westfall or Mr. Odeh or the other gentlemen
25 introduced just now by Mr. Westfall as assisting him?

18:00 1 Ladies and Gentlemen, I believe that completes
2 the introduction of those of us who will be participating
3 in the trial. However, I now need to give you the names
4 of the persons who may be testifying as witnesses in this
5 case so that I can make a similar inquiry if you know any
6 of them. There is a long list of names here so I will
7 possibly be pausing periodically to ask you if you know
8 any of the persons that I have read the names of up to
9 that point.

10 (Witness list read)

11 VENIRE PERSON: I don't know. Jim Lewis is a
12 pretty generic name but --

13 THE COURT: This Jim Lewis is a Special Agent
14 for the FBI.

18:00 15 VENIRE PERSON: Wouldn't be that one.

16 THE COURT: Sir, the court reporter didn't hear
17 your name, would you stand and give us your name.

18 VENIRE PERSON: Brice O'Dell.

19 THE COURT: Let me pause and ask if any of you
20 recognize that group of names.

21 (Witness list read)

22 THE COURT: Let me pause and ask if anyone
23 recognizes any of those names.

24 VENIRE PERSON: Mollie Drake. I don't know if
25 it's the same person, but I do know a Chris Jones.

18:00 1 THE COURT: This Chris Jones lives in Dallas,
2 Texas. Let me inquire of counsel for the defendants if
3 anyone can give us more information about the age of Mr.
4 Jones or anything about him that would help us identify
5 whether this is the same person she knows.

6 MS. SHAPIRO: He works for an engineering
7 consulting firm, your Honor. He's in his late thirties or
8 early forties.

9 THE COURT: Thank you.

10 (Witness list read)

11 THE COURT: I think that completes the list.
12 Anyone recognize any of that group of names?

13 Now, Ladies and Gentlemen, I want to tell you a
14 little bit about what this case involves. I think most of
18:00 15 you at least were told a little bit about this during the
16 individual questioning that went on earlier this week.
17 But there are a number of charges in this case. Most of
18 them however are -- revolve around the allegation that the
19 Holy Land Foundation for Relief and Development, which as
20 I told you, is named as a defendant in the indictment but
21 which is not represented here at trial, was an American
22 charitable organization that raised money for certain
23 causes, and it's alleged in the indictment that the Holy
24 Land Foundation and these individual defendants who have
25 been introduced to you who worked with the Holy Land

18:00 1 Foundation in various capacities sent money either
2 directly to or affiliates of an organization named HAMAS
3 which the United States Government has designated as a
4 foreign terrorist organization. And under United States
5 law, it is illegal for anyone to make -- to give material
6 support to a foreign terrorist organization. So once the
7 United States Government declared that HAMAS was a foreign
8 terrorist organization, it thereafter became illegal under
9 United States law for anyone to send money or anything of
10 value to or for the benefit of HAMAS. So that's really
11 what the case is about, although there are a number of
12 specific charges related to that central theme. They are
13 all revolve around that central allegation. I think you
14 have all been asked about this in the individual
18:00 15 questioning, but out of an abundance of caution, let me
16 ask you again. Is there anyone who knows something about
17 that other than what you have already told us about. I
18 know a number of you said you had read or heard something
19 in the news media particularly shortly before jury
20 selection began this week. Beyond what you have told us
21 in individual questioning, is there anyone who knows
22 something about this case before coming in court today?
23 Ladies and Gentlemen, again, I think you were
24 told a little bit about the rules that relate to criminal
25 cases in the individual questioning, but I want to go over

18:00 1 the rules that apply to criminal cases with all of you to
2 be sure there is no misunderstanding here. There are
3 fundamental rules that apply to every criminal case,
4 including this one.

5 First, a defendant is presumed innocent until
6 proven guilty. The indictment which I have referred to
7 earlier, this is written accusation that commences the
8 case. The indictment against the defendants brought by
9 the government is only an accusation, nothing more. It is
10 not proof of guilt or anything else. Each defendant in
11 this case therefore starts out with a clean slate.

12 Second, the burden of proof is on the government
13 until the very end of this case. None of these defendants
14 has any burden to prove his innocence or to present any
18:00 15 evidence or to testify, although the defendants do have
16 the right to present evidence or testify if they choose to
17 do so. Since each defendant has the right to remain
18 silent, if they elect to exercise that right, the law
19 prohibits you in arriving at your verdict from considering
20 that a defendant may not have testified.

21 And third, the government must prove each
22 defendant's guilt beyond a quantum of evidence, beyond a
23 reasonable doubt. I will explain that to you later in the
24 case. But keep in mind this is not a civil case. I know
25 that some of you have served in civil cases, and there the

18:00 1 standard is a preponderance of the evidence; that is, one
2 thing is more likely than the other thing. But in a
3 criminal case the standard is beyond a reasonable doubt.
4 Is there any member of the panel who has any question
5 about any of these rules that apply to a criminal case or
6 doubts your ability to follow those standards?

7 There is one other point that I wanted to cover
8 with you for those of you who have indicated that you had
9 previous service as a trial juror. I know some of you
10 indicated that you had served as jurors in criminal cases
11 in the State of Texas or in a county court in the State of
12 Texas. And although I have never personally had any
13 participation in the State of Texas Criminal Justice
14 System, it is my understanding that in Texas the role of
18:00 15 the juror is frequently two-fold in a criminal case. The
16 first step is that the jury has to determine the guilt or
17 innocence of the accused, and if the jury determines that
18 the accused is guilty, they are often called upon to
19 decide the punishment or the sentence of the defendant.

20 In the federal system, it works a little bit
21 differently. In this case, the jury will have the role
22 only of deciding the guilt or innocence, although there
23 will be multiple decisions to be made because there are a
24 number of defendants and each defendant is charged in
25 separate counts that charge a separate crime. Some of the

18:00 1 defendants are named in all counts and some only in one.
2 But with respect to each count of the indictment, the jury
3 will have to reach a decision about the defendant named in
4 that count. So there would be multiple determinations to
5 be made by the jury in this case. If the defendants are
6 found guilty, it will be my job as judge to decide what
7 the punishment of defendant who's found guilty will be.

8 Is there any member of the jury panel who feels
9 that he or she cannot participate in such a system knowing
10 that if the verdict of the charge is guilty that you would
11 not have any say into what the punishment of the defendant
12 would be?

13 Ladies and Gentlemen, I think I'm almost through
14 with my questioning. You were asked in the individual
18:00 15 sessions about any exposure to media counts that you may
16 have had before coming to that session. Of course, I
17 think media coverage of this case is probably ongoing, and
18 there has been a lapse of time since we saw most of you.
19 So let me ask if there is anyone on the panel who has read
20 or heard anything in the media about this case that you
21 haven't already told us about in the individual sessions.

22 Let me caution you again if you are selected to
23 serve on the jury in this case that it is very important
24 to all of these parties that this case be determined on
25 the evidence that is presented here in the courtroom and

18:00 1 on nothing else.

2 That is why we have taken such care with the
3 jury selection proceedings in this case, and I will be
4 reminding you of the importance throughout the trial of
5 avoiding any contact with media coverage of this case.

6 May I see counsel at the Bench, please?

7 Ladies and Gentlemen, I think I have covered
8 what I usually cover in my voir dire, as supplemented what
9 was done in the individual sessions. Is there anything
10 else you feel I need to cover? I think I hit all the
11 topics that Mr. Westfall had mentioned in his letter that
12 you wanted me to cover.

13 MR. WESTFALL: No, your Honor.

14 MS. HOLLANDER: Nothing, your Honor.

18:00 15 MR. GARRETT: Not for the government.

16 THE COURT: I guess we will excuse them to go
17 back to the central jury room, and we will let the parties
18 go through the struck procedure, and we'll bring the
19 eighteen back up and give them instruction.

20 MR. WESTFALL: Your Honor, on the issue of Mr.
21 Baccus.

22 THE COURT: You want to have him stay behind and
23 question him further?

24 MR. WESTFALL: Well, if anyone needs to question
25 him. I don't know that -- I don't even know who he's bad

18:00 1 on. But certainly the record can't be fair and impartial,
2 and we will submit him for challenge.

3 MR. JACKS: Just question him I guess and see
4 what he says.

5 THE COURT: Ladies and Gentlemen, it is true
6 that I have finished my questioning of the panel as a
7 whole. Mr. Baccus, in light of the matter you brought to
8 the attention of the panel today, I do need to ask you to
9 remain behind so that I can ask you a few additional
10 questions. Let me ask you when you leave the courtroom
11 that you go back to the jury assembly room on the first
12 floor. We do need you to stay at the courthouse because
13 the parties and counsel and I will be working to decide
14 which of you will actually be the jury in this case, and
18:00 15 once we have made that determination which should occur
16 within the next hour, we will let you know that, and those
17 who have been selected will be brought up to the courtroom
18 for further instructions. So it is important that you all
19 remain present here at the courthouse so that we can
20 access you quickly when a decision is made as to who's on
21 the jury.

22 Thank you for your attention, and all of you may
23 be excused from the courtroom, except Mr. Baccus.

24 VENIRE PERSON: May I speak with you a moment?

25 THE COURT: Yes, sir. Just remain behind when

18:00 1 everybody else leaves.

2 (Jury out)

3 THE COURT: Let's see, there was a few members
4 of the panel who raised their hand and asked to see me.
5 Let me be sure I know who they are. Mr. Saucier, Mr.
6 Robinson and then Mr. O'Dell and Dr. Constantinescu. Let
7 me ask all of you to go out in the hall until we call you
8 in. Please remain near the double doors at the back of
9 the courtroom.

10 I think we're ready to see next Dr.
11 Constantinescu. Did you need to see me for some reason?

12 VENIRE PERSON: Yes. The only reason is the
13 length of the trial, and if it is possible because I know
14 it's a little late now to be excused as I am a cancer
18:00 15 patient, and I have already cancelled some medical
16 appointments. I would appreciate it. If not -- because I
17 understand it would take probably three months every day.

18 THE COURT: It's every day Monday through
19 Thursday.

20 VENIRE PERSON: Yes.

21 THE COURT: But you are right; it would be a
22 period of four months.

23 VENIRE PERSON: I'm sorry. If you could
24 consider feasible, let me appreciate it.

25 THE COURT: Let me ask you a couple of follow-up

18:00 1 questions. You said you had had to cancel a couple of
2 medical appointments. I don't know how difficult they are
3 to obtain and how long you have to wait to see the
4 provider that you have to see. Can you give me an idea of
5 that?

6 VENIRE PERSON: Two months. For example, last
7 week I had MRI and surgery appointment. I had the surgery
8 last year, and now I need to go to three doctors.

9 THE COURT: How far in advance do you generally
10 need to make these appointments?

11 VENIRE PERSON: They can't see you on shorter
12 notice than that. Only if I give them a day. Most of the
13 doctors don't work on Friday.

14 THE COURT: Counsel for the parties have any
18:00 15 further questions for Dr. Constantinescu?

16 MR. JACKS: No, your Honor.

17 MR. WESTFALL: No, your Honor.

18 THE COURT: Mr. Baccus, would you come to the
19 lectern in the middle of the room and speak into the
20 microphone so that we can all hear you clearly. You said
21 this morning in your answer to one of my questions that
22 your wife had visited in the home of one of the defendants
23 and that you felt that could definitely have an influence
24 on you if you were selected to serve in this case. Can
25 you be more specific on what kind of influence you think

18:00 1 that might have on you?

2 VENIRE PERSON: She had basically stated that
3 there were some problems with the defendant and the
4 family, and she really didn't elaborate. She kind of came
5 in towards the end of helping the child and the girl that
6 was there before her or oversaw my wife said that they had
7 had some problems with the defendant and they were not
8 allowed to see the child there at the house and they had
9 to go next door to either the aunt or mother-in-law's
10 house, and it came to the point after that that the police
11 were called for some reason. But again, that was probably
12 five years ago.

13 THE COURT: Do you think that would influence
14 you against the defendant involved if you were selected as
18:00 15 a juror in this case?

16 VENIRE PERSON: Yes, sir.

17 THE COURT: Counsel for the parties have any
18 further questions for Mr. Baccus?

19 MS. CADEDDU: Not from the defendants, your
20 Honor.

21 THE COURT: Thank you, Mr. Baccus, you may
22 rejoin the others in the hall.

23 Ladies and Gentlemen, I'm not sure that the
24 parties would know this, but Mr. Kiblinger told me as the
25 panel was exiting the courtroom that Mr. Henson said he

18:00 1 had already cancelled two medical appointments, and he
2 wanted to see me about that.

3 He's Number 14.

4 Mr. Henson, Mr. Kiblinger told me you needed to
5 see me because of some medical appointments you have.

6 VENIRE PERSON: I have two doctors'
7 appointments. One is the 6th of August which is a
8 urologist. And I have my six months appointment which I
9 wasn't aware of was this close. It's the 23rd which is
10 next week. I'm a borderline diabetic. And I have to set
11 an appointment which would be next month with the VA
12 Medical Center.

13 THE COURT: I anticipate the jury will not be in
14 session with us next Monday so that should not be a
18:00 15 problem if you were selected in this case.

16 VENIRE PERSON: The first one is August 6th. I
17 have to see the urologist. I have cysts on my kidneys.
18 Every three to six months I go back to the VA. I have a
19 letter.

20 THE COURT: The 6th of August --

21 VENIRE PERSON: Should be a Monday.

22 THE COURT: Yes, it is a Monday. Is there any
23 possibility that you could move that appointment to a
24 Friday? I anticipate that the jury will not be in session
25 on Fridays.

18:00 1 VENIRE PERSON: Well, dealing with the VA, your
2 Honor, you know, moving an appointment is kind of -- It's
3 tough. I have had to move some in the past, and that
4 moves me down another six months possibly to get back in
5 for another appointment. That's really my primary care,
6 is through the VA.

7 THE COURT: Counsel for the parties have any
8 further questions for Mr. Henson?

9 MR. JACKS: Your Honor, just the fact that he is
10 going to the VA and that he's seeing a urologist, as far
11 as who that doctor is. It might be relevant in this case.

12 VENIRE PERSON: I haven't seen the same one in
13 the last year. I haven't seen the same one.

14 THE COURT: So you don't know which doctor you
18:00 15 will see?

16 VENIRE PERSON: I don't know who it's going to
17 be now. My primary care which over sees my health
18 condition, I just received a new one which was in March
19 when I went. I have had three changes in primary care in
20 the last two years over there.

21 THE COURT: Anything further, Mr. Jacks?

22 MR. JACKS: No, your Honor.

23 MR. WESTFALL: No, your Honor.

24 THE COURT: Thank you, Mr. Henson. You may
25 rejoin the others in the central room downstairs.

18:00 1 Mr. Kiblinger, I think we're ready to see next
2 Mr. Saucier, Number 23.

3 VENIRE PERSON: Just a couple of things. One
4 was something that was asked in the questionnaire that I
5 forgot to put down, and I guess because at the time I was
6 a little nervous in here the last time. I am part of an
7 organization that I signed up last year which is Minute
8 Men. It's a voluntary organization that goes to the
9 border, and they watch, and if someone crosses, they call
10 the border patrol. I contribute, but it's not in the
11 forefront of my mind. So I wanted to be sure that
12 everyone knew I was part of that organization. My major
13 concern -- I do have a concern about this going to a
14 sequester.

18:00 15 THE COURT: The jury I don't anticipate will be
16 going to a sequester.

17 VENIRE PERSON: I know you don't. But my only
18 concern is the media attention that it may. I'm a key man
19 in my company, and right now we're in two class action
20 lawsuits. I'm the only one that can design, and if I'm
21 not here, they cannot do anything in that regard. Not
22 that I'm so special I'm irreplaceable, but under the time
23 constraints where that judge requires whatever evidence,
24 we wouldn't be able to function. If there is no
25 sequester, I can still perform my duties at night. If

18:00 1 there is one, I don't know about my ability to do that or
2 their ability to pay me.

3 THE COURT: Counsel for the parties have any
4 further questions for Mr. Saucier?

5 MR. WESTFALL: Your Honor, just one. Why did
6 you join the Minute Men?

7 VENIRE PERSON: I have a concern about the
8 border security.

9 MR. WESTFALL: Is that something that would
10 affect you in this case?

11 VENIRE PERSON: No. I just wanted to make sure
12 you knew that if that was a concern for either of the
13 government or you guys.

14 MR. WESTFALL: Have you ever been inclined to go
18:00 15 down and stand on the border?

16 VENIRE PERSON: Not yet. No, I haven't done it
17 yet. But I guess I could do that if I wanted to.

18 MR. WESTFALL: Anything about that that would
19 affect your ability to be fair and impartial in a case
20 where we're talking about people who weren't born in the
21 United States?

22 VENIRE PERSON: I just wanted to make sure you
23 guys knew that because it was asked and I didn't write it
24 down.

25 MR. WESTFALL: Do you think you could be fair

18:00 1 and impartial?

2 VENIRE PERSON: Yes.

3 THE COURT: Thank you, Mr. Saucier. You may go
4 back to the central jury room.

5 Mr. Kiblinger, I think we're ready to see next
6 Mr. Robinson, Number 26.

7 I believe you indicated as the panel was leaving
8 the courtroom that you needed to see me.

9 VENIRE PERSON: Yes. What's happening on my
10 job, we got a secretary that embezzled some money, and so
11 we're going through some changes with that, and we only
12 have like seven people that's there. And myself and
13 another guy, we pretty much do some of the work and then
14 picking it up -- because we pick up and deliver -- because
18:00 15 it's going to be real difficult with the whole situation
16 to come here and be here that long. Within a week or so,
17 I could probably handle that, but anything past that is
18 going to be real difficult for the company. Like I said,
19 it's small, and we're going through some legal stuff with
20 the secretary, too.

21 THE COURT: Counsel for the parties have further
22 questions for Mr. Robinson? Thank you.

23 MR. WESTFALL: Your Honor, I'm sorry. I do.
24 You said that it's going to take about a week or so of
25 adjustment to get everything back in control?

18:00 1 VENIRE PERSON: No, I'm saying it would be
2 difficult for me to be gone beyond that amount of time.
3 They might could probably cope of with that amount of
4 time, but two weeks or three with the small amount of
5 people we have is going to be very difficult.

6 MR. WESTFALL: What would be the consequences of
7 you being gone four days a week?

8 VENIRE PERSON: The consequence is they will
9 have to hire somebody else. More than likely they will
10 have to hire somebody else. Like I said, over that period
11 of time myself and another guy do pretty much most of the
12 work going in and out of the company.

13 MR. WESTFALL: How long have you been with the
14 company?

18:00 15 VENIRE PERSON: Since 1995.

16 MR. WESTFALL: Do you think they could hire a
17 temporary person to pick up the slack while you were doing
18 it?

19 VENIRE PERSON: Well, see, they could do the
20 delivery part but not the work part. She wouldn't be able
21 to just come in and do the work I do also. Like going out
22 and picking it up is fine, but as it comes back in -- I do
23 a lot of the work. I pick up and deliver also.

24 MR. WESTFALL: How many hours a week do you
25 think you spend doing the work?

18:00 1 VENIRE PERSON: You mean per week?

2 MR. WESTFALL: In a given week, how many hours
3 would you spend designing?

4 VENIRE PERSON: Probably half of the day I'm
5 doing the work, and the other half I'm picking it up. So
6 about -- four hours a day that I'm pretty much doing the
7 work, and the rest of it I'm picking it up and taking it
8 back.

9 MR. WESTFALL: And there is two of you?

10 VENIRE PERSON: The other guy, he's on the one
11 side. He's on the litigation side, and I do the board
12 side. He's in the same thing. He works doing litigation
13 and picks up and delivers.

14 MR. JACKS: Mr. Robinson, is this something
18:00 15 would you lose your job over this or is this -- it would
16 just be a hardship for your employer?

17 VENIRE PERSON: Well, it would be a hardship for
18 the employer, you know, as being able to afford me being
19 gone for that amount of time, period.

20 MR. JACKS: Okay. Thank you.

21 THE COURT: Thank you, Mr. Robinson, you may
22 rejoin the others in the central jury room.

23 VENIRE PERSON: All right. Thank you.

24 THE COURT: Mr. Kiblinger, I think we're ready
25 to see next Mr. O'Dell, Number 41.

18:00 1 VENIRE PERSON: I just had some things going on
2 personally in my life that have come up this week since
3 this all started I wanted the Court to be aware of. A
4 lady that actually my wife and I take care of, we call her
5 our grandmother. I have been with her since I was eight
6 years, over thirty years, and she has broken her leg this
7 week and is in the ICU. She's stable and doing well right
8 now. They haven't been able to do any surgery on her leg
9 yet because she is not strong enough. They are trying to
10 get her blood count up and she's anemic right now. I
11 don't know where that is going. I wanted the Court to be
12 aware that was going on.

13 THE COURT: Thank you for bringing that to my
14 attention. Counsel for the parties have any further
18:00 15 questions for Mr. O'Dell?

16 MR. JACKS: No.

17 MR. WESTFALL: No, your Honor.

18 THE COURT: Thank you, Mr. O'Dell, you may
19 rejoin the others in the central juryroom. Mr. Kiblinger,
20 I think that completes the list of people who indicated
21 they needed to see me, does it not? We have seen now
22 since the panel left the courtroom six members of the
23 panel I believe. Dr. Constantinescu, Mr. Baccus, Mr.
24 Saucier, Mr. Robinson and Mr. O'Dell. I'm assuming the
25 defense probably will want to submit Mr. Baccus for cause.

18:00 1 Am I right about that?

2 MR. WESTFALL: Yes, your Honor.

3 THE COURT: Does the government have any
4 objection to excusing Mr. Baccus for cause?

5 MR. JACKS: No, your Honor.

6 THE COURT: I will excuse Mr. Baccus for cause.
7 It was reported to me this morning before we began that
8 there were two members on this panel who had not reported
9 as of about 9:30 this morning. I don't know whether they
10 ever showed up or not.

11 One of those was Ms. Munoz, Number 39. Ms.
12 Hudson reported to me that she was here. The other one I
13 think was Ms. Hodge, Number 45, and I guess she never made
14 it this morning. So we are down to forty-nine people for
18:00 15 this general voir dire session, and with the excusal of
16 Mr. Baccus, we're down to forty-eight. These others I
17 would say are in the category of hardship excuses, and I
18 don't know if counsel have any views on how I should use
19 my discretion in exercising those excuses.

20 MR. JACKS: I don't think Mr. Saucier was a
21 hardship. He was making it known to us, first of all,
22 about his contribution to that organization and if the
23 jury was sequestered it would be a hardship. But the
24 others -- I don't think Mr. O'Dell, was planning a
25 hardship again. I think he was just making the Court

18:00 1 aware of that. But as far as the others, I guess just
2 submit that to the Court as we have done with the others
3 regarding making that decision.

4 THE COURT: Thank you.

5 MR. WESTFALL: Your Honor, Dr. Constantinescu
6 said that she's undergoing continuous cancer treatment.

7 THE COURT: That was my understanding.

8 MR. WESTFALL: And that that would be I believe
9 a hardship, not being able to do cancer treatment. Mr.
10 Henson has one doctor's appointment that he is liable to
11 myself. At this point in time, your Honor, after you have
12 had three chances to claim a hardship, one doctor's
13 appointment, I don't know that's efficient. I agree Mr.
14 Saucier didn't say anything. He just wanted us to know
18:00 15 that he was a Minute Man. As for Robinson, there wasn't
16 anything other than just kind of messing him around.
17 Missing four days a week when he works four hours a day on
18 something that somebody already does. And after three
19 chances to claim a hardship. And with Mr. O'Dell, I don't
20 think he claimed a hardship.

21 THE COURT: Let me be sure I understand what you
22 said. You think Dr. Constantinescu is a hardship, and did
23 you think Mr. Henson is or not?

24 MR. WESTFALL: I think he's not. One doctor's
25 appointment he's going to miss.

18:00 1 MR. JACKS: Your Honor, the reason I asked if he
2 knew the doctor is because I know Mr. Cadeddu's husband
3 practices at the VA, and I know he's a urologist, and if
4 there is a possibility he's the doctor assigned to treat
5 him, that would be problematic. He said it was a doctor
6 he hadn't seen before. So there is that potential problem
7 there. So there is a couple of reasons that he may be
8 problematic.

9 THE COURT: He being Mr. Henson?

10 MS. CADEDDU: Your Honor, may I respond? There
11 was an operating room nurse on the list, and so I asked my
12 husband about the service he does there. He only operates
13 if an attending needs a surgeon to be in there. They
14 manage the patients, and he only sees in clinic. And he
18:00 15 told me that he has not operated there in almost a year.
16 He wouldn't see Jeff because he is seeing someone -- It
17 doesn't sound to me like an operative thing. It sounds
18 like a follow-up thing, and even if he had had surgery in
19 the last year, Jeff would have not have been the one to do
20 it.

21 MR. WESTFALL: And he said he has seen a
22 different doctor every time he goes there which is not
23 surprising.

24 THE COURT: I am going to excuse
25 Dr. Constantinescu in the exercise of my discretion for

18:00 1 hardship. But as to the others that we saw
2 individually -- Mr. Henson, Mr. Robinson, Mr. O'Dell and
3 Mr. Saucier -- I'm not going to excuse them. So I think
4 we still have this minimum of forty-five people that we
5 need to come up with a jury of twelve and six alternates.

6 I'll ask counsel to double-check me on that to
7 be sure I have counted correctly. The way I get to that
8 number is we started off with this list of fifty. Ms.
9 Hodge, Number 45, did not appear so we're missing her, and
10 I have excused Mr. Baccus for cause and Dr. Constantinescu
11 for hardship, and so that brings us down to 47 I guess.
12 If everyone is in agreement on those numbers, I guess I
13 now need counsel for the defense who seem to have had some
14 experience in this struck jury method refresh my memory as
18:00 15 to what we're going to do now as to the procedure for
16 exercising peremptory challenges.

17 MR. WESTFALL: I will do that. So I'm clear.
18 It seems to me the strike zone initially goes to Mr.
19 Boozer, Number 33.

20 MR. JACKS: Your Honor, any possibility the
21 Court would give us some time given these last minute
22 changes to kind of re-examine our list? We weren't
23 necessarily expecting some of these changes, and if the
24 Court would consider either re-convening at noon or
25 whenever, but just give us a little time to digest what we

18:00 1 have encountered this morning and make a little more
2 educated decision about these strikes.

3 MR. WESTFALL: Your Honor, I could address your
4 question about what the procedure is.

5 THE COURT: Let's do that. I guess I'm amenable
6 to your request, Mr. Jacks, but I think we need to let the
7 potential jurors go to lunch because it's 11:30 already.
8 Otherwise, they will be thinking about their stomachs
9 instead of my instructions.

10 MR. JACKS: They are not the only one, your
11 Honor.

12 THE COURT: Mr. Westfall, would you outline the
13 procedures again?

14 MR. WESTFALL: I will, your Honor. When we have
18:00 15 our thirty-one that we know about which we do, we have
16 twelve strikes and the government seven. So it goes
17 government one, defense two, government one defense two,
18 government one and defense two. And we do six sets,
19 twelve sets I guess -- six sets of two, and the government
20 has the first and the very last. So one two, one two, one
21 two, one. Does that make sense?

22 THE COURT: Okay.

23 MR. WESTFALL: There is two ways to approach the
24 panel. The easiest way to wrap your mind around it is the
25 entire thirty-one jurors are fair game for any strike. So

18:00 1 if somebody wanted to strike Number 31 first and Number 1
2 second, then that would be fine until the strikes are used
3 up. From just looking at it, that's the easiest way to
4 conceptualize it. There is another way where the
5 government would strike one and we would strike two, but
6 you move in rows across, and as you move in rows -- Like
7 for instance, if the government struck 1, we struck 5 and
8 6 and then the government then struck 7. 2, 3, 4 are on
9 the jury, and they can't be messed with anymore. You
10 can't go back behind the strikes. That's another way.
11 We're amenable to do it either way. I just think that all
12 of the thirty-one sitting there and striking anywhere is
13 probably conceptually the way to do it.

14 THE COURT: I agree. Since I haven't done this
18:00 15 before, I would like to do it the easiest way. Let me
16 talk with Ms. Hudson about sending the panel to lunch, and
17 I would say that we ought to give them -- it's 11:35 now.
18 We probably ought to give them until 12:45 at least. But
19 if we could I guess reconvene by -- How long do you think
20 this is going to take, Mr. Westfall? You have been
21 through it before.

22 MR. WESTFALL: It should take I would think less
23 than thirty minutes.

24 THE COURT: If we could reconvene at 12:15, we
25 could have this done by the time the jury panel gets back

18:00 1 from lunch and have the people selected brought up for
2 further instruction. Ms. Hudson has gone to call the jury
3 clerk to tell them to go to lunch, and hopefully, we will
4 have time to get lunch, too.

5 MR. CLINE: Your Honor, may I be excused from
6 the afternoon session? I have an urgent unshakable
7 commitment.

8 THE COURT: If it's okay with your client.

9 MR. ELASHI: I have no problem.

10 THE COURT: We'll be in recess until 12:15.

11 (Recess)

12 THE COURT: Are we ready to begin?

13 MS. CADEDDU: Defense is ready.

14 MR. JACKS: Ready, your Honor.

18:00 15 THE COURT: Mr. Jacks, as I understand the
16 process, the government is supposed to exercise the first
17 peremptory challenge in this initial stage. So who would
18 be your first challenge.

19 MR. JACKS: Juror Number 32, Mr. Torrez.

20 THE COURT: Mr. Westfall, who will be the first
21 two for the defense?

22 MR. WESTFALL: Your Honor, Juror Number 8, who I
23 understand to be Bobbitt, and Number 28, Ms. Ritter.

24 THE COURT: Mr. Jacks.

25 MR. JACKS: Number 14, your Honor, Juror Henson.

18:00 1 THE COURT: Mr. Westfall.
2 MR. WESTFALL: Your Honor, Number 27, Wolverton,
3 and Number 19, Drake.
4 THE COURT: Mr. Jacks.
5 MR. JACKS: Number 17, your Honor, Cynthia
6 Williams.
7 THE COURT: Mr. Westfall.
8 MR. WESTFALL: Your Honor, Number 22, Shrum, and
9 Number 20, Hill.
10 THE COURT: Mr. Jacks.
11 MR. JACKS: Number 7, your Honor, Ms. Pena.
12 MR. WESTFALL: Number 2, Gartman, and Number 1,
13 Epperson.
14 MR. JACKS: Number 11, Ms. Marshall.
18:00 15 THE COURT: Mr. Westfall.
16 MR. WESTFALL: Your Honor, Number 33 Mr. Boozer;
17 Number 23, Saucier.
18 THE COURT: Mr. Jacks. Number 24, your Honor,
19 Ms. Tillis.
20 MR. WESTFALL: Your Honor, Number 30, Young;
21 Number 6, Maddox.
22 THE COURT: Mr. Jacks.
23 MR. JACKS: Number 29, your Honor, Ms. Moss.
24 THE COURT: I believe that gives us our first
25 twelve, does it not?

18:00 1 MR. WESTFALL: Yes, sir.

2 THE COURT: Ms. Simental, Number 4; Shawn
3 Lopez-Rogina, Number 9; Alvin Lovely, Number 10; Carter
4 Arce; Number 12, Sylvester Holmes; Number 15, Tilmer
5 Johnson Junior; Number 15, Lisette Lopez; Number 21,
6 Leticia Morton, Number 21; Nanette Scroggins, Number 25;
7 Freeman Robinson, your Honor, Number 26; and Rosie Suarez,
8 Number 31.

9 And now for the alternates, I'm assuming --
10 although I don't remember you discussed this in detail,
11 Mr. Westfall -- that we simply alternate in this process.
12 The government first and then the defense.

13 MR. WESTFALL: Yes, sir. Mr. Jacks, striking
14 for the alternates beginning at Number 34, is the
18:00 15 government's first peremptory challenge.

16 MR. JACKS: Number 40, Mr. Taylor.

17 MR. WESTFALL: 44, your Honor, Mooney.

18 THE COURT: Mr. Jacks.

19 MR. JACKS: 34, your Honor, Ms. Jensen.

20 THE COURT: Mr. Westfall.

21 MR. WESTFALL: Number 42, Carrillo.

22 THE COURT: Mr. Jacks.

23 MR. JACKS: Number 37, your Honor, Ms. Overy.

24 MR. WESTFALL: Your Honor, Number 36, Jones.

25 THE COURT: Mr. Jacks.

18:00 1 MR. JACKS: Number 39, your Honor, Ms. Munoz.

2 THE COURT: Mr. Westfall.

3 MR. WESTFALL: Your Honor, Number 43, Ms.

4 Buonasera.

5 THE COURT: I believe that goes through the
6 allotted number to each side. I show then that our
7 alternates would be Mr. William Neal, Number 35; Gail
8 Graham, 38; Brice O'Dell, Number 41; Patricia Sanders,
9 Number 46; Gerry McGahan, Number 47; and Stephanie Moreno,
10 Number 48.

11 Anything else we need to accomplish before Ms.
12 Hudson goes to the central room to bring those eighteen
13 up?

14 MS. CADEDDU: No, your Honor.

18:00 15 THE COURT: We'll take another brief recess.

16 While they are being brought to the courtroom. Let me
17 just visit with you briefly about what should happen when
18 they get here. I could go ahead and swear them in and
19 give them the normal preliminary instructions that I give
20 in a criminal case. I usually use the Fifth Circuit
21 Pattern Instructions or we can defer those things until
22 Tuesday morning when they actually come and we begin
23 presentation of the indictment and opening statements.
24 And then in any event whether we do that this morning or
25 Tuesday morning, I need to enjoin them again about the

18:00 1 importance of avoiding contact with media accounts and
2 people who are involved in the trial. And then I
3 anticipate turning them over to Ms. Piwoni, because we're
4 going to be providing lunch for the jury so that they will
5 not be hopefully out in the halls encountering potential
6 witnesses or parties during lunch hour. And so she needs
7 to get their lunch order and describe the procedures we
8 will follow every day to order lunch, and then there is
9 going to be a deputy marshal I think who's going to orient
10 them about the reporting procedures to this remote
11 location before the drive to the courthouse, and he's
12 going to explain that to them, and I think we're going to
13 collect cell phone information, if we can, so that if
14 anyone doesn't show up, we will have a means of getting in
18:00 15 touch with them. Do either side have a preference on
16 whether I go ahead and give them the oath and preliminary
17 instructions today or wait until Tuesday?

18 MR. JACKS: Your Honor, the government would
19 prefer to wait until Tuesday. Given the ramifications on
20 that, just withhold on Tuesday.

21 MR. WESTFALL: I don't understand the
22 ramifications.

23 THE COURT: Well, I think what is probably meant
24 is in the case law I have looked at that is always the
25 bright line as to when jeopardy attaches is when the jury

18:00 1 is sworn.

2 MR. WESTFALL: I didn't realize the swearing in
3 and instructions were the same thing. For that, whatever
4 the Court decides. The only thing I was going to ask is
5 as to the remote location. Can the Court give them an
6 instruction basically that we're not doing this because we
7 are scared for your safety but to help in something else
8 other than that?

9 THE COURT: Well, yeah, I want to give it to
10 them in the context of avoiding contacts with the media.
11 I didn't want them to run the gauntlet every day to get
12 into the courthouse.

13 MR. WESTFALL: I would like to get on the bus
14 with them. That's very appropriate, your Honor. I was
18:00 15 worried about them inferring there was some danger.

16 THE COURT: Okay.

17 MR. WESTFALL: Josh was telling me basically
18 what the Court intended to do anyway. He's worried the
19 Court will say don't be scared because we're doing this.

20 Just because of media and leave it that I way, I
21 thought that.

22 THE COURT: Just to be on the same page, we're
23 going to shuffle the names so that when the jury is seated
24 in the jury box it will not necessarily be in this order.
25 We don't want the last six people to immediately infer

18:00 1 that they are alternates. In fact, I intend to tell them
2 that we have shuffled the names and that the lawyers and
3 the Court know who the alternates are and the jurors, but
4 they will not. And that it's important for everyone to
5 pay close attention throughout the trial because they may
6 well wind up being a juror at the end of the case.

7 Very well. We will take a recess while Ms.
8 Hudson brings those eighteen to the courtroom.

9 (Recess)

10 THE COURT: Good afternoon, Ladies and
11 Gentlemen. Welcome back to the courtroom. Please make a
12 mental note of where you are seated in the jury box
13 because that's where you will sit throughout the trial,
14 and it's important that you occupy the same seat during
18:00 15 the court sessions. All of us are going to be together
16 for quite a period of time it looks like it so it is
17 important that we all be in place at the appropriate time.

18 I have just a few remarks for you today, and I
19 will be giving you some instructions at greater length
20 when we reconvene next week. Today I want to emphasize to
21 you, as I have already told you I think, the importance of
22 deciding this case strictly on the basis of the evidence
23 that is presented here in the courtroom. The parties have
24 the right to expect nothing less. One aspect of that case
25 is that you should not discuss the case with anyone or

18:00 1 allow anyone to discuss it with you, and that includes
2 discussing it among yourselves during the case before you
3 have heard the arguments of counsel and my instructions on
4 the law. Otherwise, without realizing it, you might begin
5 forming impressions or opinions about the case which are
6 not based on what the evidence has been.

7 I know when you leave the courthouse today
8 people that you know or members of your family may
9 understand that you are on jury service and naturally are
10 curious about what you are doing and will be asking you
11 about your service, and you may not be sure how far you
12 can go in responding to any such questions. Let me be
13 specific about that. When you leave here when someone
14 asks you whether you are serve on a jury, you are
18:00 15 authorized to tell them, yes, you are serving on a jury,
16 and the name of the case is the Holy Land Foundation, and
17 Judge Fish is the presiding judge, and he has told you,
18 you cannot say anymore about the case until it is over.
19 That's the first rule. Don't discuss the case or allow
20 anyone to discuss it with you.

21 Also, I have tried to introduce to you all the
22 people that I know will be involved in the trial so that
23 you would know who they are. It's important that you
24 avoid contact with any of those people as well. I know
25 there is a natural human tendency when you encounter

18:00 1 someone in the hall to be polite and say hello and maybe
2 even start talking about the weather, something innocuous
3 like that. But if someone on one side of the case sees
4 you talking to the other side, they are naturally going to
5 suspect the worst, even if you are talking about something
6 entirely unrelated to the case. Please do nothing that
7 would create the appearance of impropriety. We're going
8 to try to make it as easy as possible for you to avoid
9 contact with anyone who has anything to do with the trial
10 or any media that are covering the trial. As I think you
11 probably understand from the individual questioning that
12 took place earlier this week, there has been some media
13 coverage about this case to this point and all indications
14 are that we will continue to have media coverage about the
18:00 15 case throughout the trial and it may include efforts on
16 the part of reporters or others to find out who the jury
17 is and try to interview you all which is entirely
18 inappropriate. And my guess is that probably you would
19 not like that either. If I were in your place, I would
20 not want my face and name and identity splashed over the
21 front pages or over the television screen which is
22 probably an invitation for other people then to try to
23 contact you. So we are going to take some steps to try to
24 avoid any of that happening. For one thing, as you will
25 be instructed later today, we're going to have you report

18:00 1 to a remote location that's outside the courthouse every
2 morning of the trial day, and when you are all there,
3 someone from the United States Marshal's office will drive
4 you in a van to the courthouse and probably bring you up a
5 private elevator to this floor so you don't have to run
6 the gauntlet of the media if they are gathered on the
7 first floor. And then at the end of the day, you will be
8 transported back to that remote location, and the Marshal
9 will discuss that with you later today.

10 Also to try to minimize your potential contact
11 with the media or anyone involved in the trial, we're
12 going to provide lunch for you every day here in the
13 juryroom. So my assistant, Ms. Piwoni, will have menus to
14 distribute to you each day where you make your choices of
18:00 15 what you want and turn that in, and lunch will then be
16 provided to you that following day, and then on the
17 following day there will be a menu for the next day, and
18 we will try to rotate places that we order lunch from so
19 that you don't get burned out on what you eat every day.

20 Going back to one thing about the way you are
21 seated in the jury box. There are eighteen people in the
22 jury. The law requires a jury of twelve and allows us to
23 have as many as six alternates in a case. So some of you
24 are regular jurors, and some of you are alternates, but
25 you don't know which is which. We mixed up the order in

18:00 1 the jury box. So the parties and I and the lawyers know
2 who the regular jurors and alternates are, but you do not,
3 and there is a reason for that, and the reason is all of
4 you need to pay strict attention to the evidence
5 throughout the trial because you will not know and cannot
6 know until the end of the case whether you will be a juror
7 who will deliberate and reach a verdict with the other
8 jurors or whether you are an alternate, and if you are not
9 needed to substitute for one of the other jurors, you will
10 be excused. So it's important that everyone pay close
11 attention to the evidence as it comes in.

12 And along that line, because of the anticipated
13 length of the trial, I am going to allow the jury to take
14 notes, if you choose to do so. That's an individual
18:00 15 decision for each of you. Some of you may decide to take
16 notes; some of you may not. We will provide writing
17 materials for you in the event that you do decide to take
18 notes. There are sort of pros and cons on whether to take
19 notes or not. The pro, of course, is that in a long trial
20 such as this, it can assist you in recalling what happened
21 sometime ago. The cons are that -- and I have found this
22 myself so I can tell you this from personal experience.
23 Sometimes in cases tried without a jury where I have to
24 evaluate the evidence, as you will be doing at the end of
25 the trial, and decide which witnesses to believe and which

18:00 1 witnesses not to believe, I have found that it's hard to
2 take detailed notes and watch the demeanor of the witness
3 as the witness is testifying. So there is sort of a trade
4 off on whether you are taking detailed notes or watching
5 the demeanor of the witness as the witness testifies.
6 Another con is that inevitably in a group the size of
7 yours there are some better note takers than others. So
8 there is a temptation if some of you take notes and others
9 do not for those who don't take notes to rely on the notes
10 of the jurors who do. Each of you has to reach your own
11 decision in this case, and I'll discuss that with you
12 later in more detail, but it's important you reach your
13 own decision without relying on the recollection or notes
14 of other jurors.

18:00 15 I intend that Court will be in session Monday
16 through Thursday. I think you have been told that
17 already. Our Court session starts at nine o'clock every
18 day unless a different start time is announced the day
19 before. We will take an hour and a half luncheon recess
20 midday starting about 12:00 and ending at 1:30, and we
21 will have mid-morning and mid-afternoon recesses of
22 approximately fifteen or twenty minutes and we will try to
23 recess by 4:45 every day. I don't know how far the remote
24 location is from the courthouse, but hopefully you should
25 be there to start your journey home by five o'clock. The

18:00 1 reason I told you about the notes is you may want to be
2 thinking between now and the time you come back to the
3 courthouse, which will be next Tuesday, July 24th -- you
4 may be wanting to think about whether you want to take
5 notes in this case or not.

6 Ladies and Gentlemen, I think that's everything
7 I wanted to cover with you today. I do want to emphasize
8 the importance of being on time. In a jury trial like
9 this, we cannot begin until all of you are here, and you
10 can see, looking around the courtroom, how many people are
11 involved in this trial. So if everybody but you is on
12 time, that means the rest of us has to wait on that one
13 person who's late. I know that emergencies come up,
14 unforeseen circumstances, so probably in a trial that is
18:00 15 going to last as long as everyone predicts this one is, it
16 will happen that something will come up and you may be
17 occasionally late. I understand that, but please don't
18 let that be a routine occurrence because it really affects
19 the way we can start the trial and ultimately will affect
20 how long we're all here. A case that is supposed to last
21 three months could take longer than that if we habitually
22 have to start later than nine o'clock every day.

23 One of the things I want to have collected when
24 you see my assistant and the Marshal is cell phone
25 information for all of you who have cell phones so that if

18:00 1 someone is running late and we haven't heard from you, we
2 can hopefully get in touch with you and find out what the
3 situation is.

4 Ladies and Gentlemen, as I said, I think that
5 completes my remarks for you today. Thank you for your
6 attention. When we finish here, you will exit through
7 this door behind me and to my right which is across the
8 hall from the juryroom. The juryroom is where you will
9 always go when we leave the courtroom and where you will
10 always resemble before coming back to the courtroom. This
11 orientation by my assistant, Ms. Piwoni and the Deputy
12 Marshal will take place in the juryroom when we're
13 finished here in the courtroom. It may be that Mr.
14 Kiblinger will also have some orientation for you. So

18:00 15 please give those people the same attention that you have
16 given me.

17 Also, you might want to sort of mentally figure
18 out how you are going to come back in the courtroom when
19 we come back in the courtroom, and we may need to practice
20 a couple of times before we get it down. But the people
21 at the far end of the jury box will be at the first of the
22 line, and the people near this end will be at the end of
23 the line. So Mr. Kiblinger may want to instruct you
24 further. Let me excuse you to go to the juryroom now for
25 that orientation and keep in mind whatever time the

18:00 1 Marshal tells you to be at the remote location, please be
2 there on Tuesday the 24th by that hour so that you can be
3 transported to the courthouse, and we can begin promptly
4 at nine o'clock that morning. I hope all of you have a
5 pleasant weekend.

6 (Jury out)

7 THE COURT: Ladies and Gentlemen, while we're
8 still all together, I wanted to call the attention of the
9 parties and counsel to something that I just did a short
10 while ago, and that is to put out an amended order
11 scheduling this Daubert hearing for Dr. Levitt on Monday.
12 An order was issued yesterday setting that at 1:30, but
13 that was due to a failure of communication between me and
14 my staff, and I actually intended to start that hearing
18:00 15 Monday morning at 9:30 because I wanted to be sure that we
16 could get it done in that one day. So an amended order
17 was issued a short while ago that resets that hearing from
18 1:30 to 9:30 in the morning. I wanted everyone to be
19 aware of that.

20 We will have also the CIPA Section 2 pretrial
21 conference that was requested by the government
22 immediately following the conclusion of that hearing.
23 Anything else we needed to take up?

24 MS. CADEDDU: Your Honor, you may have said
25 this. Did you admonish them not to research on the

18:00 1 internet?

2 THE COURT: No, I didn't, but if you want me to,
3 if you want to bring them back in the courtroom, I can do
4 that. Certainly that's a part of my normal preliminary
5 instructions, so I will be telling them that on Tuesday
6 about not doing any investigation or research on their
7 own. I really didn't think they would be that highly
8 motivated this weekend. Maybe they are more excited about
9 this than I know.

10 MR. WESTFALL: Since I have been on this case,
11 my whole definition of motivation has been changed. And
12 the notes, are they going to be leaving them in the
13 courthouse?

14 THE COURT: That would be my instruction.

18:00 15 MR. WESTFALL: Whatever the Court wants to do.

16 THE COURT: We'll be in recess until 9:30 Monday
17 morning.

18 (Recess)

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C E R T I F I C A T I O N

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I further certify that the transcript fees and format comply with those prescribed by the court and the Judicial Conference of the United States.

s/Cassidi L. Casey

CASSIDI L. CASEY
UNITED STATES DISTRICT REPORTER
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

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